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PROTECTING OUR DEMOCRACY: REASSERTING CONGRESS' POWER OF THE PURSE

House Committee on the
BUDGET 

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In March 2020, the Committee on the Budget held a hearing on Protecting Congress' Power of the Purse and the Rule of Law. Constitutional, fiscal, and rule of law experts discussed how congressional control of spending—as mandated by the Constitution—keeps the purse in the hands of the representatives of the people; ensures that the government remains directly accountable to the will of its constituents; and protects against tyrannical presidents through the separation of powers. These experts also testified how, over time, the Executive Branch has infringed on Congress' constitutional power of the purse by abusing congressionally delegated tools and pushing the boundaries of foundational budget laws to increase its influence over spending. They outlined how Congress could—and should—exercise its constitutional lawmaking authority to rein in decades of executive overreach and protect our democracy in the process.

The Congressional Power of the Purse Act, introduced by Chairman John Yarmuth in the 116th Congress, implements the recommendations endorsed by these experts. Now, as Congress' work in this area continues, the Budget Committee will build on initial findings and testimony with a hearing on April 29th examining the importance of reasserting Congress' power of the purse. Witnesses will





discuss the proper balance of the separation of powers, the current framework of fiscal laws that safeguard Congress' power of the purse, how those fiscal laws operate in practice, and how the Congressional Power of the Purse Act will better empower Congress to protect its constitutional charge.

MONEY, AND WHO CONTROLS IT, IS FUNDAMENTALLY IMPORTANT IN A DEMOCRATIC GOVERNMENT

When the Framers first established the constitutional balance of powers between the three branches of government, they unequivocally charged Congress with control over the people's tax dollars and how such dollars are spent. The Framers described this power of the purse as "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people." Therefore, they entrusted this power to Congress – the people's immediate and most accountable representatives. Further, it is through this power that the Framers envisioned reducing "all the overgrown prerogatives of the other branches of the government." However, Congress' ability to exercise its singular constitutional authority has been increasingly challenged by an Executive Branch that, regardless of party, has sought to claim control of the nation's purse for itself.

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THE EXECUTIVE BRANCH HAS PUSHED THE BOUNDARIES OF ITS SPENDING AUTHORITY UNDER EXISTING LAW

Though Congress has provided the Executive Branch with limited discretion as to how it fulfills its spending responsibilities, it made sure to put in place important statutory safeguards to set parameters on such discretion. For example, cornerstone fiscal laws like the Antideficiency Act (ADA) and the Impoundment Control Act (ICA) aim to prevent federal agencies from misusing their delegated spending responsibilities. And Congress established the U.S. Government Accountability Office (GAO)—a nonpartisan legislative agency under Congress' jurisdiction—to assist Congress in the discharge and protection of its core constitutional functions. One of GAO's responsibilities is to issue budget and appropriations law decisions that evaluate whether Executive Branch activities comply with laws such as the ADA and the ICA. GAO's legal decisions are an important check on the Executive Branch's spending activities because they help make Congress aware of, and enable Congress to respond to, violations of such laws. The Executive Branch, however, has a record of ignoring and even



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THE SECRECY OF FINAL SPENDING DECISIONS PREVENTS REAL OVERSIGHT

Just as concerning as the Executive Branch's self-serving interpretations is the lack of transparency around many final Executive Branch spending decisions. Through the ADA, Congress charged the President with the responsibility of preventing deficiencies and ensuring agencies use appropriations at an effective and appropriate pace, thereby protecting Congress' power of the purse. The President delegated the statutory authority to “apportion” appropriations to the Office of Management and Budget (OMB), which issues all apportionments for the Executive Branch. In addition, when questions of law arise, the Attorney General advises the President and the heads of Executive departments through formal opinions by the Office of Legal Counsel (OLC). The Executive Branch treats these budget and appropriations legal opinions as the preeminent interpretation of the law, even if they conflict with Congress' intent or GAO's legal decisions.

Despite the binding nature of OMB apportionments and OLC legal opinions upon agencies, the Executive Branch is not currently required to, and often decides not to, publicly disclose them. This lack of transparency is harmful to Congress, as Congress relies on this information to fulfill its constitutional functions and conduct proper oversight. It is harmful to agency officials, who depend on clear, reliable information and guidance to perform their duties. And it is harmful to the public, who can only monitor and hold their government accountable if they have access to the requisite information.

CONGRESS HAS AN URGENT DUTY TO PROTECT ITS CONSTITUTIONAL PREROGATIVES

Congress, the branch of government most accountable to the people and in which the Framers vested all legislative powers, has a responsibility to exercise its lawmaking authority to protect our democracy and ensure it can properly exercise its constitutional functions. Decades of purposeful infringement on



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THE CONGRESSIONAL POWER OF THE PURSE ACT STRENGTHENS EXISTING BUDGET LAWS AND MANDATES MUCH-NEEDED TRANSPARENCY

The Congressional Power of the Purse Act clarifies and strengthens existing controls under the ADA and the ICA, demands transparency for final, legally binding documents, expands reporting requirements in the President's budget, and improves checks and balances under the National Emergencies Act. It empowers GAO to obtain the information it needs to conduct its investigations of executive spending activity. The bill also transforms historically accepted but non-binding practices into statutory mandates, enhances requirements under existing law, and sheds light on Executive Branch spending decisions. These provisions will reassert Congress' constitutional power of the purse, strengthen our nation's separation of powers, and protect our democracy.

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The Budget Committee expects to learn more about these issues and why legislative action—such as the Congressional Power of the Purse Act—is necessary at its upcoming hearing. Witnesses scheduled to testify include:

Edda Emmanuelli Perez
Deputy General Counsel
U.S. Government Accountability Office

Molly Reynolds, Ph.D.
Senior Fellow – Governance Studies
The Brookings Institution

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